



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2005

Ms. Patricia E. Carls
City Attorney for the City of Georgetown
Brown & Carls
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2005-03050

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221729.

The City of Georgetown (the "city"), which you represent, received a request for information "used to prepare the economic impact section of the Airport Master Plan Update."¹ You state that some responsive information has been released to the requestor. You assert that the responsive surveys are not public information. In the alternative, you believe that third parties may claim that the submitted information is confidential or proprietary under section 552.110 of the Government Code, but you raise no exceptions to disclosure of this information on behalf of the city. You state that you have notified the interested third parties

¹You state that the requestor agreed to "stop the clock" on the request while the requestor and the city determined the scope of the request. We note that the deadlines contained in section 552.301 are fixed by statute and cannot be altered by agreement. See Open Records Decision No. 541 at 3 (1990) ("[T]he obligations of a governmental body under the [predecessor to the Act] cannot be compromised simply by its decision to enter into a contract. See Attorney General Opinion JM-672 (1987); Open Records Decision No. 514 (1988)."); see also *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (governmental agency may not bring information within scope of predecessor to section 552.101 by promulgation of rule; to imply such authority merely from general rule-making powers would be to allow agency to circumvent very purpose of predecessor to the Act), *Bristol-Myers Squibb Co. v. Goldston*, 957 S.W.2d 671, 673 (Tex. App.—Fort Worth 1997, pet. denied) ("Because venue is fixed by law, any agreement or contract whereby the parties try to extend or restrict venue is void as against public policy.").

of this request for information and of their right to submit arguments to this office as to why the city should not release the information that pertains to each of them.² We have received comments from one third party, Century Turbines. We have considered the submitted arguments and reviewed the submitted information.³

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Act are whether: (1) information relates to governmental body's official business; (2) consultant acts as agent of governmental body in collecting information; and (3) governmental body has or is entitled to access to information). Where a third party has prepared information on behalf of a governmental body and the governmental body has a right of access to it, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent on behalf of the governmental body is subject to disclosure. Open Records Decision No. 518 (1989).

In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were "public information" for purposes of the Act. In that open records decision, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by

²*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the consultant in preparation of the report were not "public information" for purposes of the Act, and thus not required to be disclosed. *Id.*

In this instance, you state that the information at issue consists of surveys pertaining to an economic impact analysis conducted for the city by GRW Willis, Inc. ("GRW"), a third-party consultant. You state that the city does not own or have a right of access to the information at issue, and in support of this, you have submitted the city's contract with GRW. The contract includes the following provision: "Original drawings and documents shall become the property of [GRW]." You also state "[t]he results of the surveys were summarized in the report (which has been provided to the requestor), but the surveys themselves are not part of the report; the surveys are part of the underlying data relied upon by [GRW] to form the conclusions presented in the report." The city's contract with GRW does not provide the city a general right to access or inspect information acquired by the consultant in preparation of the report. In addition, based on your assertions, we believe the information at issue constitutes documents within the exclusive possession of GRW. Thus, we find that this information was not "collected, assembled, or maintained" by or for the city for purposes of section 552.007. Accordingly, we conclude that the surveys at issue are not "public information" under the Act, and the city is not required to produce these records in response to the request for information. Gov't Code § 552.002; *see* ORD 445. As we are able to make this determination, we do not address the exceptions claimed by Century Turbines.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

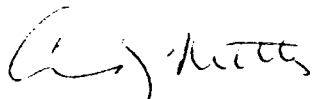
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 221729

Enc. Submitted documents

c: Ms. Penny Burt
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Castleberry Instruments
505 Terminal Drive
Georgetown, Texas 78628
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Central Texas Avionics
160-C Terminal Drive
Georgetown, Texas 78628
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Georgetown Aviation Facilities
160-A Terminal Drive
Georgetown, Texas 78628
(w/o enclosures)

IFR Flight Training
402 Wright Brothers Drive, #202
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Pilot's Choice Aviation
2089 Corsair Drive
Georgetown, Texas 78628
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Gantt Aviation, Inc.
221 Stearman Drive
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Georgetown Jet Center
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